

**PT 00-43**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**BROADVIEW MISSIONARY  
BAPTIST CHURCH ,  
APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**Docket No. 96-16-388**

**Real Estate Exemption**

**For 1996 Tax Year  
P.I.N. 15-16-420-007  
15-16-420-015  
Cook County Parcels**

**Kenneth J. Galvin  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. John C. Broihier on behalf of Broadview Missionary Baptist Church, Mr. Shepard Smith on behalf of The Department of Revenue of the State of Illinois, Mr. Jerry Westmoreland, Intervenor.

**SYNOPSIS:**

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Numbers 15-16-420-007 and 15-16-420-015 (hereinafter the “property”) qualifies for exemption from 1996 real estate taxes under 35 ILCS 200/15-40, wherein “[a]ll property used exclusively for religious purposes” is exempted from real estate taxation.

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The controversy arises as follows. On September 23, 1996, Broadview Missionary Baptist Church (hereinafter “Broadview” or the “Church”) filed an Application for Property Tax Exemption for tax year 1996 with the Cook County Board of Review (hereinafter the “Board”). Dept. Ex. No. 1. The Board reviewed the application and requested that additional information be provided. On February 26, 1997, the Board recommended to the Illinois Department of Revenue (hereinafter the “Department”) that no action be taken on the request for exemption. On May 22, 1997, the Department denied the request for exemption finding that the property was not in exempt use in 1996. Dept. Ex. No. 2. On June 10, 1997, applicant filed a timely request for a hearing as to the denial.

On August 29, 2000, the applicant presented evidence at a formal hearing with Pastor Clarence Hopson, Deacon Kenneth Atwater, and Harvey Bond, business manager for the Church, presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the property be exempt from real estate taxes for 16% of the 1996 tax year.

**FINDINGS OF FACT:**

1. Dept. Ex. Nos. 1 and 2 establish the Department’s jurisdiction over this matter and its position that the property was not in exempt use, or being prepared for exempt use in 1996.
2. Broadview acquired the property by warranty deed on August 9, 1996. The property was purchased from Allied Van Lines Terminal Company for \$990,000. At the time

of purchase, the property contained an office building and warehouse. Tr. pp. 26, 107-108; Applicant's Ex. Nos. 1, 8, 9, 10.

3. Reverend Hopson has been the pastor of Broadview since 1972, when the congregation consisted of 45 people. It now consists of 2700 people. Tr. pp. 18-19.
4. The Church is open 7 days a week with 3 services on Sunday, Christian prayer services, Christian education classes, and jail and drug ministries. The Church offers scholarships for people going to college, and classroom training for slow learners. Tr. pp. 20-23; Applicant's Ex. No. 4.
5. Broadview was exempted from State of Illinois Retailers' Occupation Tax on November 8, 1996, as an organization "operated exclusively for religious purposes." Broadview was exempted from federal income tax under Section 501(c)(3) of the Internal Revenue Code on November 21, 1995. Tr. pp. 23-25; Applicant's Ex. Nos. 2, 3.
6. Broadview was incorporated under the "Not For Profit Corporation Act" of Illinois on June 26, 1972, and was a corporation in good standing on August 15, 1995. Tr. p. 25; Applicant's Ex. No. 5.
7. Broadview is governed by a constitution and bylaws and the structural organization of the Church is detailed in an organizational chart. Tr. pp. 25-26; Applicant's Ex. Nos. 6, 7.
8. Kenneth Atwater has been affiliated with the Church since 1982. He is an ordained deacon, Sunday school superintendent and chairman of Broadview's building committee. The committee consists of 6 members and its purpose was initially to find a suitable location for the expansion of the Church. Tr. pp. 38-40.

9. On August 17, 1996, the committee began meeting with different departments of the Church to determine their space needs. On August 21, 1996, the committee began accepting resumes from attorneys who wished to represent the Church during the construction phase. These attorneys were interviewed on August 27, 1996. Tr. pp. 44-45; Applicant's Ex. No. 12.
10. During the week of August 19 through August 23, three Brothers from the Church were present on the property to allow access to six demolition and salvage contractors. Each was given a copy of asbestos reports, prepared by Wang Engineering and asked to submit demolition, salvage and asbestos removal estimates. The buildings could not be demolished without first removing the asbestos. Tr. pp. 45-46, 64-66; Applicant's Ex. Nos. 12, 13, 14.
11. On August 29, 1996, the Church paid Wang approximately \$13,000, to assess the property. The property at one time contained a gas station and Wang looked at environmental issues pertaining to the gasoline storage and contamination by the tanks left on the property. Tr. pp. 90-91, 98, 104-105; Applicant's Ex. No. 15.
12. On October 12, 1996, the Church paid \$6,500 to "Gentile & Associates, Inc." registered land surveyors, for a topographical survey of the property. Tr. pp. 90-91; Applicant's Ex. No. 15.
13. When the subject property was first purchased by the Church, it was zoned for industrial use. In September of 1996, the Church requested a special use permit from the City of Broadview to construct, maintain and operate a religious facility. The Church was advised to file a request to have the property rezoned for single family residential use. Tr. p. 47; Applicant's Ex. Nos. 12, 20.

14. In March of 1997, the Church submitted a petition to rezone the subject property for single family residential use and for a special use permit. At a subsequent hearing before the Zoning Board, the petition was denied. The Village Board approved the Zoning Board's denial of the Church's petition to rezone. Applicant's Ex. No. 20.
15. On September 10, 1998, the Circuit Court of Cook County, in case number 97 CH 14313, ruled that the decision of the President and Board of Trustees of the Village of Broadview denying the Church's petition for rezoning the property to residential use and application for a special use permit was "arbitrary and unreasonable and declared to be invalid as applied to the subject property." The judgment of the Circuit Court of Cook County was affirmed by the Appellate Court of Illinois, First Judicial District, on March 31, 2000. Applicant's Ex. No. 20.
16. On November 5, 1996, the Church received a contract from asbestos consultant, Midwest Environmental Consulting Services, Inc., for the asbestos project design, project management and air monitoring of the property, at a total cost of \$12,000. \$5,000 was paid to Midwest on December 14, 1996, representing payment for inspection and project design. Tr. pp. 53-54, 88-90; Applicant's Ex. Nos. 12, 15.
17. On November 11, 1996, "777 Design, Inc.," architects for the Church, wrote to Barton Aschman Associates, Inc. requesting a "proposal to complete a traffic study for this project." The traffic study was required by the Village for zoning purposes. The proposal was received by the Church on November 22, 1996. Tr. pp. 54-55, 56-57; Applicant's Ex. No. 12.
18. On November 11, 1996, "Church Building Consultants, Inc." submitted a proposal for design and build services for the property. On November 22, 1996, "Church

Building Consultants, Inc.” submitted a pre-construction schedule and sketches of proposed skylight installations and gymnasiums. Tr. pp. 55-56; Applicant’s Ex. No. 12.

19. On November 13, 1996, the Church paid their attorney approximately \$15,000 for assistance with contracts and zoning for the subject property. Tr. pp. 91-93; Applicant’s Ex. No. 15.

20. The Church also retained an attorney specializing in environmental matters and paid him approximately \$5,800 between August 14, 1996, and December 14, 1996. Tr. p. 93; Applicant’s Ex. No. 15.

21. The Church paid “777 Design, Inc.” approximately \$22,000 in 1996 for designing the buildings on the property and for working with the Church on asbestos removal and consulting. Tr. pp. 94-95; Applicant’s Ex. No. 15.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for 16% of the 1996 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill.App.3d 186 (4<sup>th</sup> Dist. 1933).

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32

Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department's determination of May 22, 1997, denying the exemption request was based solely on the Department's conclusion that the property was not in exempt use in 1996. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that applicant owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding: The applicant is governed by the "Baptist Faith and Message" as adopted by the Southern Baptist Convention on May 9, 1963. Applicant's Ex. No. 6. The Church purchased the property on August 9, 1996, by warranty deed. Applicant's Ex. No. 1. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes in 1996.

The evidence presented at the hearing shows that several activities occurred after the purchase of the property on August 9, 1996. The building committee began working with architects and different departments of the Church to determine space needs. Tr. p. 44. In September of 1996, the Church applied for a special use permit with the Village of Broadview. Tr. p. 47. The Church was also soliciting bids for a traffic study which was required by the Village for zoning purposes. Tr. pp. 56-57. In October of 1996, a topographical survey of the property was completed. The Church was simultaneously



working with architects “777 Design, Inc.” and with “Church Building Consultants, Inc.” for design and construction services on the property. Tr. pp. 94-95.

At the time the property was purchased, it contained a building and warehouse and had, at one time, contained a gas station. Tr. pp. 26, 98. In order to raze the building and begin development of the property, it was necessary to first remove the asbestos. Tr. p. 104. During the week of August 19 through August 23, 1996, the Church allowed access on the property to contractors in order to solicit bids for demolition, salvage and asbestos removal. Applicant’s Ex. No. 12. On August 29, 1996, the Church paid Wang Engineering approximately \$13,000 to assess the environmental issues pertaining to gasoline storage and contamination by the tanks left on the property. Tr. pp. 90-91. On November 5, 1996, the Church received a contract from asbestos consultant, Midwest Environmental Consulting Services, Inc. for the project design, project management and air monitoring of the property. Tr. pp. 53-54. In August of 1996, the Church had retained an attorney specializing in environmental matters and had paid him approximately \$5,800 in 1996.

I have concluded that actual development and adaptation of the subject property for exempt use began on November 5, 1996, when the Church secured the services of the asbestos consultant, Midwest Environmental Consulting Services, Inc. In order to raze the building, the asbestos in it had to be removed. No other development work could be done on the property without the removal of the asbestos. Tr. p. 104. According to the testimony of Harvey Bond, business manager for the Church, the asbestos removal was not completed until 1997, “but a good portion of it was done in 1996.” Tr. p. 108. The contract with Midwest Environmental Consulting Services to remove the asbestos,

together with the Church's ongoing activities with the architects and request for proper zoning, demonstrate that the project had gone beyond a mere intention to convert the property, and actually constituted development and adaptation of the property for exempt use.

WHEREFORE, for the reasons stated above, I recommend that the property be exempt from real estate taxes for 16% of the 1996 tax year which represents the period from November 5, 1996, through December 31, 1996, during which time the property was in the process of development and adaptation for religious use.

October 19, 2000

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Kenneth J. Galvin  
Administrative Law Judge